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ORDINANCE REGULATING FOOD AND SOFT DRINK ESTABLISHMENTS UPHELD.

An ordinance of the city of Portland, Oreg., regulating food and soft drink establishments has been declared valid by the Supreme Court of Oregon.¹

The ordinance provides for the licensing of food and soft drink establishments if the location and sanitary conditions and arrangements are satisfactory. Employees in such establishments are required to obtain health certificates which are good for three months. The medical examinations of employees are made by the bureau of health, and a nominal fee of 25 cents is charged for each examination.

The defendant, who was engaged in conducting a grocery store, refused to obtain a license. He was convicted in the lower courts and the supreme court affirmed the conviction. In the opinion it was said:

He [the defendant] contends that the "ordinance makes no provision or regulation by which the bureau of health is to be guided in determining in what particular the applicant for license shall be 'physically fit,' nor what requirements must be met to constitute a grocery store 'a suitable place'"; * * *

If the premises comply with the ordinance of the city and the rules and regulations of the government with reference to plumbing, water supply, ventilation, and cleanliness, the permit must be granted, and the health officer has no right to refuse it. The ordinance of the city of Portland and the rules and regulations of the government in such matters are both definite and certain, and the only question which the board of public health has any authority to consider is whether or not the premises or place of business come within such terms and provisions. * * *

It is not within the authority, or even the discretion, of the bureau of health to grant arbitrarily a permit to one person who has complied with the ordinance, rules, and regulations, and deny it to another who has complied with them. In the instant case, as to his place of business, there is no claim or pretense on the part of the city that the defendant has not complied with the city ordinance, rules, and regulations. The offense consists in his failure and neglect to pay the required license fee, which he admits he had not paid. * * *

The purpose and intent of both the city of Portland and the Government was to control and to prevent the spread of contagious and infectious disease. * * *

Under its charter the city of Portland had a legal right to adopt the ordinance here involved. It is not for this court to say whether or not the measure should have been enacted; that is a legislative and not a judicial question. The charter also makes it the duty of the bureau of health to enforce such an ordinance, and vests it with such power to make the necessary rules and regulations for its enforcement.

There is no evidence that the requirements of the bureau of health are arbitrary or unreasonable, or that there was any discrimination in their enforcement. * * *

¹ City of Portland v. Traynor, 183 Pac., 933.